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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 28 1994

In the Matter of)
Implementation of Commission's)
Equal Employment Opportunity Rules)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

MM Docket No. 94-34

TO: The Commission

REPLY COMMENTS OF PRESS BROADCASTING COMPANY, INC.

1. Press Broadcasting Company, Inc. ("Press") hereby submits its Reply Comments in the above-captioned proceeding. In particular, Press wishes to express its support for certain portions of the Comments filed herein by the National Association of Broadcasters ("NAB"). In so doing, however, Press also wishes to differentiate itself from the NAB's position in some limited respects, as discussed below.

2. As an initial matter, Press emphasizes that it fully supports the goal of equal employment opportunity ("EEO"). Discrimination in employment or promotion based on race, ethnicity, religion, or other such irrelevant grounds is plainly unacceptable. Individuals should be considered on the basis of their own unique qualifications, not on the basis of impermissible racial or ethnic stereotypes.

3. Having said that, however, Press notes its wholehearted agreement with the NAB's observation that the Commission's current proposals place undue emphasis on process

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while ignoring far more relevant factors. See NAB Comments at 8-12. As a practical matter, after all, the goal of any EEO program is the hiring of minorities and women. Thus, the first step in assessing an individual licensee's success (or failure) in achieving that result must logically be to look at the bottomline: has the licensee in fact hired minorities and women in reasonable numbers? If the answer to that question is in the affirmative, then that licensee can and should be deemed to have satisfied its obligations under the Commission's EEO program, and no further inquiry (or related record-keeping burdens) should be necessary.

4. But, as the NAB correctly points out, the Commission's current emphasis on various aspects of the recruitment and hiring process has relegated the achievement of results to a secondary (at best) position. Such a relegation is illogical and counterintuitive. In Press' view, the Commission's current approach imposes serious burdens on the broadcast industry as a whole (and smaller broadcasters in particular), without any compensatory benefits for anyone. Indeed, by insisting on a process-based analysis rooted in percentage quotas ^{1/}, the Commission risks placing itself and its licensees

^{1/} While the Commission may choose not to characterize its approach as being based on quotas, it is difficult to identify any accurate and intellectually honest alternative characterization. Such reliance on numerical quotas is, in Press' view, inimical to all concerned, including particularly members of the racial, ethnic or sexual groups who are the supposed beneficiaries of the
(continued...)

in a quicksand situation, where the paperwork burdens on the licensee, and the related burdens on the Commission of reviewing, evaluating, clarifying and (if necessary) penalizing the licensee's conduct, could easily overwhelm the Commission and its licensees, without even beginning to achieve the desired goal of minority and female employment. The Commission's apparent fascination for extraneous, incidental, numerical details, and its concomitant reluctance to focus primarily on the actual results of a licensee's hiring policies, are misguided and, potentially, counterproductive.

5. There simply is no common sense basis for the Commission's approach. This is especially true in view of the fact that that approach imposes far greater EEO burdens on the

^{1/}(...continued)
government's policies. By insisting on compliance with certain numerical standards, the Commission fosters the unfortunate (and inaccurate) notion that, but for those governmentally-imposed standards, members of the protected groups might not be able to succeed on their own individual, personal merits. Such a notion plainly disservices the very individuals whom the underlying policies are supposed to assist. Moreover, such race-based policies can contribute to the equally unfortunate perception that race or ethnicity is and should be a valid and meaningful factor in the day-to-day decision-making routine of our society. As the appellants in Brown v. Board of Education, 347 U.S. 483 (1954) eloquently (and successfully) argued:

[governmental classifications] based upon race and color alone . . . [are] patently the epitome of that arbitrariness and capriciousness constitutionally impermissible under our system of government. A racial criterion is a constitutional irrelevance, and is not saved from condemnation even though dictated by a sincere desire to avoid the possibility of violence or racial friction.

Appellants' Brief in Brown, filed September 23, 1952 at 6-7 (citations omitted).

broadcast industry than are presently imposed on, for example, the Commission itself or even Congress. What justification could conceivably exist for such disparate burdens? Admittedly, the broadcast industry may be said to have a reasonably significant impact on American society -- but how can that impact be said to be any greater than the impact which our society's own governmental officials have? Especially in the context of equal opportunity, a concept which should apply to all elements of our society, it is simply not right to impose on one segment of the population substantial burdens which are not imposed on other equally (or more) important segments of the population. Viewed from this perspective, the Commission's EEO policy as it presently stands is plainly excessive and misdirected.^{2/}

6. If, notwithstanding the foregoing, the Commission decides to maintain its EEO policies (as well as its other race-based licensing policies), Press also wishes to suggest an area in which some clarification would be useful, if not essential. To the extent that the Commission elects to impose race-based rules and policies, the Commission should be exceedingly careful to identify with precision just what racial and/or ethnic groupings are involved. But the Commission's current Annual Employment Report form (FCC Form 395-B) contains several

^{2/} Press notes that this position is distinct from any position which the NAB has apparently taken in its Comments, and Press does not wish to suggest that the NAB has in any way endorsed Press' observations in this regard.

definitions of "Race/Ethnic Categories" which appear to be inconsistent or overlapping.

7. For example, the term "White, not of Hispanic Origin" is defined as "a person having origins in any of the original peoples of Europe, North Africa, or the Middle East", while the term "Black, not of Hispanic Origin" is defined as "a person having origins in any of the black racial groups of Africa", and the term "Hispanic" is defined as "a person of Mexican, Puerto Rican, Cuban, Central or South America or other Spanish Culture or origin, regardless of race."

8. As a threshold matter, it would be useful for the Commission to define the term "having origins" as it relates to individual people. That term in and of itself is hardly precise and poses a number of potentially difficult questions concerning the quality and quantity of the "origins" any individual might be said to "have".

9. Second, is a person who considers himself/herself "Black" excluded from that category if he/she "has origins" in North Africa, as the definition of "White, not of Hispanic Origin" suggests? Is there some anthropological or other objective basis from which a person might ascertain with certainty the correct categorization? What about a person of Spanish ancestry -- the definition of "White, not of Hispanic Origin" would seem to exclude such a person, while the definition of "Hispanic" (which includes persons "of Spanish Culture") would

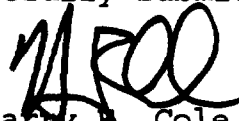
not. What does "of Spanish Culture" mean, anyway -- how does the Commission define that term? Could a person born, say, in Poland, yet claiming to be "of Spanish Culture", qualify as "Hispanic"? See Storer Broadcasting Co., 87 F.C.C.2d 190 (1981).

10. And what about a person of Portuguese ancestry -- would he/she be "White, not of Hispanic Origin" (because the person "has origins in . . . Europe"), or rather "Hispanic" (because the person is "of other Spanish Culture"). See Capital City Community Interests, Inc., FCC 86D-44 (Initial Decision) at 59 (released July 6, 1986) ("Portuguese descent is not the same as Hispanic, and persons of Portuguese descent are not entitled to any minority enhancement credit."). And if Portuguese persons are not "Hispanic", what about South American persons of Portuguese descent? And what basis exists for treating "the Indian Subcontinent" as defining a minority, but not according equivalent treatment to "the Middle East". For that matter, what precise geographic/cultural boundaries does the Commission understand by the terms "Indian Subcontinent", "Middle East", and "North Africa"?

11. All of these questions -- and a range of other similar ones -- focus the real question here: who exactly is a "minority" entitled to the benefits of the Commission's race-based governmental policies? Is the term "minority" determined by sheer population statistics, or by a history of past discrimination, or by some other formula? Is the term "minority"

static or dynamic? For example, if there were to come a time that "White, not of Hispanic Origin" males comprise significantly less than 50% of the population would they be treated as "minorities"? Consideration and careful resolution of these and other similar questions would be extremely useful to the affected industry if the Commission chooses to continue to implement race-based rules and policies.

Respectfully submitted,


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